

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Rovira, *et al.*

Serial No.: 09/847,625

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Group Art Unit: 2623

Examiner: Lonsberry, Hunter B.

Docket No. A-6671 (191910-1780)

For: **System and Method for Providing Television Programs on Demand**

REPLY BRIEF UNDER 37 C.F.R 41.41

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Sir:

This is a Reply Brief in response to the Examiner's Answer dated January 3, 2008.

I. STATUS OF THE CLAIMS

Claims 1-25, 27-36 remain pending in the present application. The Examiner's Answer maintains the rejections of the claims and generally repeats the arguments advanced during prosecution of this application along with providing comments to the Appeal Brief (in the Response to Argument Section, pages 14-21 of the Examiner's Answer), filed on September 26, 2007. With regard to the substantive remarks of the Examiner's Answer, Appellants disagree. Appellants will address some issues raised in the Examiner's Answer. Appellants continue to repeat, re-allege, and incorporate by reference the positions and arguments set forth in the Appeal Brief.

II. ARGUMENTS

Independent Claim 1

The Examiner's Answer provides the following rebuttal comments, beginning on page 15 (emphasis added), and set forth below in relevant part:

Ellis is relied upon to teach an electronic program guide which offers VOD functionality. In figure 2, television listings, VOD listings, Pay per view listings etc are transmitted to a regional facility 26 and in turn to the user equipment over analog, digital, out of band or other methods (page 9, line 11 – page 10, line 24, page 11, line 29 – page 23, line 14). The listings data includes data for current programs, future programs and Video on demand programs which include start times and ending times (page 13, lines 7-32). A STB may be used to implement an interactive program guide to present the information and present VOD listings as well (page 15, lines 17-27, page 16, lines 10-22). A remote control may be used to scroll through listings or directly select a program by opening a browse mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings (page 18, lines 6-15).

While in a VOD menu, a user may access a pull down menu that presents a list of start times (the examiner equates this to a listing of defined start times for a future program, see page 23, lines 6-25). Further a user can order a program at a current time (for immediate consumption, page 24, lines 4-6, likewise a user can use the program guide as previously discussed to watch a current broadcast program see page 24, lines 11-24), or at future program at a user defined time (page 25, line 28 – page 26, line 7). A reminder may be used which when presented enables a user to watch the program at the scheduled time, watch the program immediately, or reschedule the program at another time (page 26, lines 1-10).

Appellants respectfully note that, even assuming *arguendo* the STB in *Ellis* receives listings data for current, future, and video on demand programming, claim 1 recites, among other features, an explicit format for an IPG (the above-emphasized portion from the Examiner's Answer would appear to improperly and unreasonably suggest that multiple screens are somehow equivalent to a single IPG) that is simply not found in *Ellis*. For instance, even assuming *arguendo* the data received by the STB in *Ellis* can be formatted in a plurality of different program guide displays, with a plurality of different arrangements, it does not necessarily follow that the explicitly claimed arrangement of claim 1 is contemplated in *Ellis* or rendered obvious by the art of record.

Claim 1 requires that the **IPG** provided to the user includes "a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program ***being scheduled for broadcast to a plurality of users at a predetermined current time.***" None of the program guide displays in *Ellis* (e.g., Figures 6A-8) disclose or suggest a currently scheduled television program ***being scheduled for broadcast to a plurality of users at a predetermined current time.*** For instance, the description of drawings section of *Ellis* describes Figure 6A as "an illustrative display screen of a program guide display...that a viewer may use to browse video-on-demand programs shown on the program guide display." At the stage of ordering shown in Figure 6A, the video on demand program is not "scheduled" for broadcast.

Figure 8 of *Ellis* appears to disclose a screen that enables a viewer to actually complete an ordering process. It is respectfully noted that even at the stage of ordering represented by Figure 8, it still cannot be said that the program is scheduled. Indeed, there is no illustration or disclosure of an **IPG** that includes currently or future scheduled programs.

Further, Figure 8 of *Ellis* appears to be viewer-specific, and hence it cannot reasonably be said that the program ordered by the viewer from the display of Figure 8 is somehow broadcast to a plurality of users. However, from the above cited portion from the Examiner's Answer, it is alleged that "a user may access the guide by opening a browse

mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings.” Even assuming *arguendo* that listings are available that may be broadcasted to a plurality of users, there is nothing in *Ellis* to suggest that such display of regularly broadcast programs is anything more than what is provided in the program guide displays of figures 6A-8 – namely, what appears to be a mere listing of titles with no reference to a schedule, and hence “unscheduled.” Accordingly, Appellants respectfully submit that the claimed features are simply not shown or taught in *Ellis*.

For similar reasons presented above, Appellants respectfully submit that none of the program guide displays of *Ellis* disclose, teach, or suggest an **IPG** that provides a **scheduled future television program**, said scheduled future television program being otherwise available only via a **scheduled broadcast to a plurality of users at a predetermined later time**. Accordingly, Appellants respectfully submit that the above-emphasized claim features are simply not shown or taught in *Ellis*.

The Examiner’s Answer acknowledges (page 16) that “*Ellis* fails to specifically teach highlighting a future scheduled TV program and providing a user with an option to view the highlighted scheduled program at a user defined time, the future television programs only being otherwise available only via a scheduled broadcast.” However, Appellants respectfully disagree that *LaJoie* remedies the deficiencies of *Ellis*. The figures in *LaJoie* pertaining to an IPG appear to be those shown in Figures 16 and 17. However, nothing in *LaJoie* (and in particular, nothing in citations of column 24, line 48 – column 25, line 29) discloses, teaches, or suggests “**in response to a user highlighting said scheduled future television program**, providing said user with an **option to view the highlighted scheduled future television program at a user-defined time**.” The Examiner’s Answer (page 18) also makes reference to the IPPV purchasing option (column 31, line 15-65, *LaJoie*, emphasis added), which is partially reproduced below in relevant part as follows:

FIG. 28 illustrates a process for purchasing an Impulse Pay-Per-View (IPPV) event within the present invention. Selecting an IPPV channel from either an interactive program guide display 540 or a television display 542 causes an event

barker 544 to be displayed. This barker informs the subscriber of a currently showing or upcoming IPPV event. Event barker 544 provides a summary indicator 546 and buy indicator 548 to instruct the subscriber to press "A" application definable key 252 to view a summary of purchased IPPV events 550 or press "B" application definable key 252 to purchase the IPPV event...

From this reproduced section, it is clear that selection in this scenario is via a channel, not in response to highlighting ***said scheduled future television program***. Also, though reference to Figure 29 is included in the Examiner's cite to *LaJoie*, Figure 29 of *LaJoie* involves selection via a barker, not an ***IPG***. Accordingly, *LaJoie* fails to remedy the deficiencies of *Ellis*.

Appellants further submit that *Imajima* does not remedy the deficiencies of *Ellis* and *LaJoie*. With regard to the highlighting feature and the option to view the highlighted schedule at a user defined time, the Examiner's Answer alleges as follows (pages 18-19):

Imajima discloses that a user may select a program which is to be broadcast at a regularly scheduled future time via an NVOD service (figure 5, column 1, lines 35-40), a user may also request to view the program at a viewer defined time via the FVOD service (figure 7, column 1, lines 35-45) as the program is streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming. The examiner notes that NVOD programs are broadcasted on a regularly scheduled broadcast, and by the user electing to start the program immediately without waiting for the next NVOD broadcast, the user has sent input requesting a program at a user defined time (current time) which is not a scheduled future television time.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify *Ellis* in combination with *thestranger.com* to include the combination NVOD/FVOD features of *Imajima* for the advantages of allowing the program to be streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming.

Appellants respectfully disagree. The Examiner's Answer reproduced above makes reference to column 1, lines 35-45 and figures 5 and 7 of *Imajima*, the text of which is reproduced below as follows:

The FVOD service is a service through which the subscribers can immediately request and watch a desired program recorded on video. At the request of a subscriber, the requested video is played immediately. The subscriber can also exclusively watch a specified program recorded on video. Therefore, the FVOD service, as with the home video tape recorder and video disk, enables the subscriber to not only play but also fast-forward, rewind, and pause the video. To

realize these capabilities, the FVOD service requires use of an exclusive channel for each subscriber.

Appellants respectfully submit that there is absolutely no discussion of the FVOD above or in Figures 5 and 7 as a ***scheduled future television program***. Further, there is no mention of an ***IPG*** in *Imajima*, nor is one disclosed in *thestranger.com*. In addition, assuming *arguendo* the “Truman Show” was indeed publicly available via a 2001 broadcast does not necessarily prove that the “Truman Show” was unavailable before the PCT publication date. Accordingly, Appellants respectfully submit that *Imajima* (and *thestranger.com*) fails to disclose, teach, or suggest ***“in response to a user highlighting said scheduled future television program, providing said user with an option to view the highlighted scheduled future television program at a user-defined time.”***

Hence, even assuming *arguendo* a proper motivation to combine, the admission of which is neither explicitly expressed nor implied, the art of record fails to explicitly or implicitly disclose, teach, or suggest all the features of claim 1.

Additionally, though set forth on pages 19-20, Appellants are unaware of any prior allegation of alleged predictability of the results or reasonable expectation of success. Appellants believe the allegation of predictability of results or expectation of success to be inadequately supported by the facts of record, and indeed, unreasonable in view of the fact that art of record fails to disclose, teach, or suggest all of the features of claim 1 and the omission of the claimed features has not been adequately accounted for. Accordingly, it is respectfully submitted that a *prima facie* case of obviousness has not been established, and hence Appellants respectfully request the rejection be overturned.

Independent Claim 19

The Examiner’s Answer provides the following rebuttal comments, beginning on page 15 (emphasis added), and set forth below in relevant part:

Ellis is relied upon to teach an electronic program guide which offers VOD functionality. In figure 2, television listings, VOD listings, Pay per view listings etc are transmitted to a regional facility 26 and in turn to the user equipment over analog, digital, out of band or other methods (page 9, line 11 – page 10, line 24, page 11, line 29 – page 23, line 14). The listings

data includes data for current programs, future programs and Video on demand programs which include start times and ending times (page 13, lines 7-32). A STB may be used to implement an interactive program guide to present the information and present VOD listings as well (page 15, lines 17-27, page 16, lines 10-22). A remote control may be used to scroll through listings or directly select a program by opening a browse mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings (page 18, lines 6-15).

While in a VOD menu, a user may access a pull down menu that presents a list of start times (the examiner equates this to a listing of defined start times for a future program, see page 23, lines 6-25). Further a user can order a program at a current time (for immediate consumption, page 24, lines 4-6, likewise a user can use the program guide as previously discussed to watch a current broadcast program see page 24, lines 11-24), or at future program at a user defined time (page 25, line 28 – page 26, line 7). A reminder may be used which when presented enables a user to watch the program at the scheduled time, watch the program immediately, or reschedule the program at another time (page 26, lines 1-10).

Appellants respectfully note that, even assuming *arguendo* the STB in *Ellis* receives listings data for current, future, and video on demand programming, claim 19 recites, among other features, an explicit format for an IPG (the above-emphasized portion from the Examiner's Answer would appear to improperly and unreasonably suggest that multiple screens are somehow equivalent to a single IPG) that is simply not found in *Ellis*. For instance, even assuming *arguendo* the data received by the STB in *Ellis* can be formatted in a plurality of different program guide displays, with a plurality of different arrangements, it does not necessarily follow that the explicitly claimed arrangement of claim 19 is contemplated in *Ellis* or rendered obvious by the art of record.

Claim 19 requires a television program schedule (embodied in an IPG) that includes "a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program **being scheduled for broadcast to a plurality of users at a predetermined current time.**" None of the program guide displays in *Ellis* (e.g., Figures 6A-8) disclose or suggest a currently scheduled television program **being scheduled for broadcast to a plurality of users at a predetermined current time.** For instance, the description of drawings section of *Ellis*

describes Figure 6A as “an illustrative display screen of a program guide display...that a viewer may use to browse video-on-demand programs shown on the program guide display.” At the stage of ordering shown in Figure 6A, the video on demand program is not “scheduled” for broadcast.

Figure 8 of *Ellis* appears to disclose a screen that enables a viewer to actually complete an ordering process. It is respectfully noted that even at the stage of ordering represented by Figure 8, it still cannot be said that the program is scheduled. Indeed, there is no illustration or disclosure of an **IPG** that includes currently or future scheduled programs.

Further, Figure 8 of *Ellis* appears to be viewer-specific, and hence it cannot reasonably be said that the program ordered by the viewer from the display of Figure 8 is somehow broadcast to a plurality of users. However, from the above cited portion from the Examiner’s Answer, it is alleged that “a user may access the guide by opening a browse mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings.” Even assuming *arguendo* that listings are available that may be broadcasted to a plurality of users, there is nothing in *Ellis* to suggest that such display of regularly broadcast programs is anything more than what is provided in the program guide displays of figures 6A-8 – namely, what appears to be a mere listing of titles with no reference to a schedule, and hence “unscheduled.” Accordingly, Appellants respectfully submit that the claimed features are simply not shown or taught in *Ellis*.

For similar reasons presented above, Appellants respectfully submit that none of the program guide displays of *Ellis* disclose, teach, or suggest an **IPG** that provides a **scheduled future television program**, said scheduled future television program being otherwise available only via a **scheduled broadcast to a plurality of users at a predetermined later time**. Accordingly, Appellants respectfully submit that the above-emphasized claim features are simply not shown or taught in *Ellis*.

The Examiner’s Answer acknowledges (page 16) that “Ellis fails to specifically teach highlighting a future scheduled TV program and providing a user with an option to view the

highlighted scheduled program at a user defined time, the future television programs only being otherwise available only via a scheduled broadcast.” However, Appellants respectfully disagree that *LaJoie* remedies the deficiencies of *Ellis*. The figures in *LaJoie* pertaining to an IPG appear to be those shown in Figures 16 and 17. However, nothing in *LaJoie* (and in particular, nothing in citations of column 24, line 48 – column 25, line 29) discloses, teaches, or suggests “***in response to a user highlighting said scheduled future television program...provide said client device with said scheduled future television program at a user-defined time.***” The Examiner’s Answer (page 18) also makes reference to the IPPV purchasing option (column 31, line 15-65, *LaJoie*, emphasis added), which is partially reproduced below in relevant part as follows:

FIG. 28 illustrates a process for purchasing an Impulse Pay-Per-View (IPPV) event within the present invention. Selecting an IPPV channel from either an interactive program guide display 540 or a television display 542 causes an event barker 544 to be displayed. This barker informs the subscriber of a currently showing or upcoming IPPV event. Event barker 544 provides a summary indicator 546 and buy indicator 548 to instruct the subscriber to press "A" application definable key 252 to view a summary of purchased IPPV events 550 or press "B" application definable key 252 to purchase the IPPV event...

From this reproduced section, it is clear that selection in this scenario is via a channel, not in response to highlighting ***said scheduled future television program***. Also, though reference to Figure 29 is included in the Examiner’s cite to *LaJoie*, Figure 29 of *LaJoie* involves selection via a barker, not an ***IPG***. Accordingly, *LaJoie* fails to remedy the deficiencies of *Ellis*.

Appellants further submit that *Imajima* does not remedy the deficiencies of *Ellis* and *LaJoie*. With regard to the highlighting feature and the option to view the highlighted schedule at a user defined time, the Examiner’s Answer alleges as follows (pages 18-19):

Imajima discloses that a user may select a program which is to be broadcast at a regularly scheduled future time via an NVOD service (figure 5, column 1, lines 35-40), a user may also request to view the program at a viewer defined time via the FVOD service (figure 7, column 1, lines 35-45) as the program is streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming. The examiner notes that NVOD programs are broadcasted on a regularly scheduled broadcast, and by the user electing to start the program immediately without waiting for the next NVOD

broadcast, the user has sent input requesting a program at a user defined time (current time) which is not a scheduled future television time.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Ellis in combination with thestranger.com to include the combination NVOD/FVOD features of Imajima for the advantages of allowing the program to be streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming.

Appellants respectfully disagree. The Examiner's Answer reproduced above makes reference to column 1, lines 35-45 and figures 5 and 7 of *Imajima*, the text of which is reproduced below as follows:

The FVOD service is a service through which the subscribers can immediately request and watch a desired program recorded on video. At the request of a subscriber, the requested video is played immediately. The subscriber can also exclusively watch a specified program recorded on video. Therefore, the FVOD service, as with the home video tape recorder and video disk, enables the subscriber to not only play but also fast-forward, rewind, and pause the video. To realize these capabilities, the FVOD service requires use of an exclusive channel for each subscriber.

Appellants respectfully submit that there is absolutely no discussion of the FVOD above or in Figures 5 and 7 as a ***scheduled future television program***. Further, there is no mention of an ***IPG*** in *Imajima*, nor is one disclosed in *thestranger.com*. In addition, assuming *arguendo* the "Truman Show" was indeed publicly available via a 2001 broadcast does not necessarily prove that the "Truman Show" was unavailable before the PCT publication date. Accordingly, Appellants respectfully submit that *Imajima* (and *thestranger.com*) fails to disclose, teach, or suggest ***in response to a user highlighting said scheduled future television program...provide said client device with said scheduled future television program at a user-defined time***.

Hence, even assuming *arguendo* a proper motivation to combine, the admission of which is neither explicitly expressed nor implied, the art of record fails to explicitly or implicitly disclose, teach, or suggest all the features of claim 19.

Additionally, though set forth on pages 19-20, Appellants are unaware of any prior allegation of alleged predictability of the results or reasonable expectation of success.

Appellants believe the allegation of predictability of results or expectation of success to be inadequately supported by the facts of record, and indeed, unreasonable in view of the fact that art of record fails to disclose, teach, or suggest all of the features of claim 19 and the omission of the claimed features has not been adequately accounted for. Accordingly, it is respectfully submitted that a *prima facie* case of obviousness has not been established, and hence Appellants respectfully request the rejection be overturned.

Independent Claim 36

The Examiner's Answer provides the following rebuttal comments, beginning on page 15 (emphasis added), and set forth below in relevant part:

Ellis is relied upon to teach an electronic program guide which offers VOD functionality. In figure 2, television listings, VOD listings, Pay per view listings etc are transmitted to a regional facility 26 and in turn to the user equipment over analog, digital, out of band or other methods (page 9, line 11 – page 10, line 24, page 11, line 29 – page 23, line 14). The listings data includes data for current programs, future programs and Video on demand programs which include start times and ending times (page 13, lines 7-32). A STB may be used to implement an interactive program guide to present the information and present VOD listings as well (page 15, lines 17-27, page 16, lines 10-22). A remote control may be used to scroll through listings or directly select a program by opening a browse mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings (page 18, lines 6-15).

While in a VOD menu, a user may access a pull down menu that presents a list of start times (the examiner equates this to a listing of defined start times for a future program, see page 23, lines 6-25). Further a user can order a program at a current time (for immediate consumption, page 24, lines 4-6, likewise a user can use the program guide as previously discussed to watch a current broadcast program see page 24, lines 11-24), or at future program at a user defined time (page 25, line 28 – page 26, line 7). A reminder may be used which when presented enables a user to watch the program at the scheduled time, watch the program immediately, or reschedule the program at another time (page 26, lines 1-10).

Appellants respectfully note that, even assuming *arguendo* the STB in *Ellis* receives listings data for current, future, and video on demand programming, claim 36 recites, among other features, an explicit format for an IPG (the above-emphasized portion from the Examiner's Answer would appear to improperly and unreasonably suggest that multiple screens are somehow equivalent to a single IPG) that is simply not found in *Ellis*. For

instance, even assuming *arguendo* the data received by the STB in *Ellis* can be formatted in a plurality of different program guide displays, with a plurality of different arrangements, it does not necessarily follow that the explicitly claimed arrangement of claim 36 is contemplated in *Ellis* or rendered obvious by the art of record.

Claim 36 requires a television program schedule (embodied in an IPG) that includes “a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program ***being scheduled for broadcast to a plurality of users at a predetermined current time.***” None of the program guide displays in *Ellis* (e.g., Figures 6A-8) disclose or suggest a currently scheduled television program ***being scheduled for broadcast to a plurality of users at a predetermined current time.*** For instance, the description of drawings section of *Ellis* describes Figure 6A as “an illustrative display screen of a program guide display...that a viewer may use to browse video-on-demand programs shown on the program guide display.” At the stage of ordering shown in Figure 6A, the video on demand program is not “scheduled” for broadcast.

Figure 8 of *Ellis* appears to disclose a screen that enables a viewer to actually complete an ordering process. It is respectfully noted that even at the stage of ordering represented by Figure 8, it still cannot be said that the program is scheduled. Indeed, there is no illustration or disclosure of an ***IPG*** that includes currently or future scheduled programs.

Further, Figure 8 of *Ellis* appears to be viewer-specific, and hence it cannot reasonably be said that the program ordered by the viewer from the display of Figure 8 is somehow broadcast to a plurality of users. However, from the above cited portion from the Examiner’s Answer, it is alleged that “a user may access the guide by opening a browse mode which displays regularly broadcast programs (broadcast meaning programs broadcasted to a plurality of users including at a current time) and access VOD listings.” Even assuming *arguendo* that listings are available that may be broadcasted to a plurality of users, there is nothing in *Ellis* to suggest that such display of regularly broadcast programs is anything more than what is provided in the program guide displays of figures 6A-8 – namely,

what appears to be a mere listing of titles with no reference to a schedule, and hence “unscheduled.” Accordingly, Appellants respectfully submit that the claimed features are simply not shown or taught in *Ellis*.

For similar reasons presented above, Appellants respectfully submit that none of the program guide displays of *Ellis* disclose, teach, or suggest an **IPG** that provides a **scheduled future television program**, said scheduled future television program being otherwise available only via a **scheduled broadcast to a plurality of users at a predetermined later time**. Accordingly, Appellants respectfully submit that the above-emphasized claim features are simply not shown or taught in *Ellis*.

The Examiner’s Answer acknowledges (page 16) that “*Ellis* fails to specifically teach highlighting a future scheduled TV program and providing a user with an option to view the highlighted scheduled program at a user defined time, the future television programs only being otherwise available only via a scheduled broadcast.” However, Appellants respectfully disagree that *LaJoie* remedies the deficiencies of *Ellis*. The figures in *LaJoie* pertaining to an IPG appear to be those shown in Figures 16 and 17. However, nothing in *LaJoie* (and in particular, nothing in citations of column 24, line 48 – column 25, line 29) discloses, teaches, or suggests “**logic configured to provide, in response to a user highlighting said scheduled future television program...said user with said scheduled future television program at a user-defined time**.” The Examiner’s Answer (page 18) also makes reference to the IPPV purchasing option (column 31, line 15-65, *LaJoie*, emphasis added), which is partially reproduced below in relevant part as follows:

FIG. 28 illustrates a process for purchasing an Impulse Pay-Per-View (IPPV) event within the present invention. Selecting an IPPV channel from either an interactive program guide display 540 or a television display 542 causes an event barker 544 to be displayed. This barker informs the subscriber of a currently showing or upcoming IPPV event. Event barker 544 provides a summary indicator 546 and buy indicator 548 to instruct the subscriber to press "A" application definable key 252 to view a summary of purchased IPPV events 550 or press "B" application definable key 252 to purchase the IPPV event...

From this reproduced section, it is clear that selection in this scenario is via a channel, not in response to highlighting **said scheduled future television program**. Also,

though reference to Figure 29 is included in the Examiner's cite to *LaJoie*, Figure 29 of *LaJoie* involves selection via a barker, not an **IPG**. Accordingly, *LaJoie* fails to remedy the deficiencies of *Ellis*.

Appellants further submit that *Imajima* does not remedy the deficiencies of *Ellis* and *LaJoie*. With regard to the highlighting feature and the option to view the highlighted schedule at a user defined time, the Examiner's Answer alleges as follows (pages 18-19):

Imajima discloses that a user may select a program which is to be broadcast at a regularly scheduled future time via an NVOD service (figure 5, column 1, lines 35-40), a user may also request to view the program at a viewer defined time via the FVOD service (figure 7, column 1, lines 35-45) as the program is streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming. The examiner notes that NVOD programs are broadcasted on a regularly scheduled broadcast, and by the user electing to start the program immediately without waiting for the next NVOD broadcast, the user has sent input requesting a program at a user defined time (current time) which is not a scheduled future television time.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify *Ellis* in combination with *thestranger.com* to include the combination NVOD/FVOD features of *Imajima* for the advantages of allowing the program to be streamed to the user immediately and the user does not have to wait for the next NVOD broadcast to be able to watch the program, thereby providing a convenient and flexible way for a user to enjoy programming.

Appellants respectfully disagree. The Examiner's Answer reproduced above makes reference to column 1, lines 35-45 and figures 5 and 7 of *Imajima*, the text of which is reproduced below as follows:

The FVOD service is a service through which the subscribers can immediately request and watch a desired program recorded on video. At the request of a subscriber, the requested video is played immediately. The subscriber can also exclusively watch a specified program recorded on video. Therefore, the FVOD service, as with the home video tape recorder and video disk, enables the subscriber to not only play but also fast-forward, rewind, and pause the video. To realize these capabilities, the FVOD service requires use of an exclusive channel for each subscriber.

Appellants respectfully submit that there is absolutely no discussion of the FVOD above or in Figures 5 and 7 as a **scheduled future television program**. Further, there is no mention of an **IPG** in *Imajima*, nor is one disclosed in *thestranger.com*. In addition, assuming *arguendo* the "Truman Show" was indeed publicly available via a 2001 broadcast

does not necessarily prove that the “Truman Show” was unavailable before the PCT publication date. Accordingly, Appellants respectfully submit that *Imajima* (and *thestranger.com*) fails to disclose, teach, or suggest ***logic configured to provide, in response to a user highlighting said scheduled future television program...said user with said scheduled future television program at a user-defined time.***

Hence, even assuming *arguendo* a proper motivation to combine, the admission of which is neither explicitly expressed nor implied, the art of record fails to explicitly or implicitly disclose, teach, or suggest all the features of claim 36.

Additionally, though set forth on pages 19-20, Appellants are unaware of any prior allegation of alleged predictability of the results or reasonable expectation of success. Appellants believe the allegation of predictability of results or expectation of success to be inadequately supported by the facts of record, and indeed, unreasonable in view of the fact that art of record fails to disclose, teach, or suggest all of the features of claim 36 and the omission of the claimed features has not been adequately accounted for. Accordingly, it is respectfully submitted that a *prima facie* case of obviousness has not been established, and hence Appellants respectfully request the rejection be overturned.

CONCLUSION

Based upon the foregoing discussion, the Appellants respectfully request that the Examiner's final rejection of claims 1-25, 27-36 be overruled and withdrawn by the Board, and that the application be allowed to issue as a patent with all pending claims.

No additional fee is believed to be due. However, any additional fee that may be due or required is authorized to be charged to deposit account no. 20-0778.

Respectfully submitted,

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